

South Korea Discusses the Legal Issues of Jurisdiction Over the Security of International Ships in the Port Waters

Shi Wenxin

2022 Master of China Institute of Boundaries and Oceanology, Wuhan University, Wuhan, China

Abstract: This paper first summarizes the problems of Korea's security jurisdiction for international ships sailing in its port waters, that is, there is a dead area of jurisdiction. There are differences in the positions of the Ministry of Ocean and Fisheries, the Port Commune, the Port Security Commune and the Marine Police Agency on the security jurisdiction of the "port". The root cause of this difference lies in the special geopolitical nature of the port area and the loopholes in South Korea's domestic legislative transformation of the Security Rules for International Ships and Port Facilities (ISPS Rules). South Korea can learn from the practices of other countries to make a more detailed division of the water and land areas of the port facilities, and further formulate more detailed separate regulations.

Keywords: Port Facilities; Maritime Security; ISPS Rules.

1. Problems Existing in Ship Security Jurisdiction at South Korean Ports

1.1 Questions are Raised

After the "9.11" incident, the IM response under the advocacy of the United States, a meeting of the governments of the contracting parties in December 2002, with the fastest speed through the international convention for life at sea (SOLAS convention) maritime security amendment, the new content of international ship and port facilities security rules (ISPS rules), aims to add an international standards, strengthen the international security management of ships and port facilities, to prevent ships or port facilities from terrorism and other security threats.

The implementation of the States parties to the SOLAS Convention has often become the focus of both practical and theoretical circles. In order to better implement the Convention,

States parties including China and South Korea have rapidly lated ISPS rules. In practice, however, problems often arise. For example, when the Port State Inspector (PSCO) and the Flag State Authority (FSCO) board the ships, the conflict between the — ISPS rules and the — provisions of the ship security regulations, the domestic legislation, the established technical standards and business guidelines, and the lack of security information evaluation mechanism[1][2].

International ship security is related to the border security management of coastal ships, which is not a simple problem. It often involves other public security, border defense and other institutions or departments, and it is difficult to plan or coordinate by the maritime management agencies alone. In particular, when foreign ships on international ships moored in the port leave the ship without the permission of the port authorities, there may even be jurisdiction competition among multiple state organs. In this regard, South Korea is particularly prominent. Therefore, this paper takes the four international trade ports as the center, especially the Busan port where many foreign sailors left the accident without authorization as the key research object, and points out the problems existing in Korea's security jurisdiction of international ships sailing in its port waters, so as to draw the enlightenment to China.

1.2 The Causes of the Problems

The port is a place for foreign ships to enter, berth and realize the entry of foreigners, which is a very important area for national security. The Comprehensive Defense Law of South Korea stipulates trade ports such as Busan, Incheon and Guangyang ports as national security facilities and conducts special management. However, between 2021 to 2023, the number of unauthorized deparof foreign ships moored at Korean ports reached 47, a significant increase from 25 in the previous

three years (2018-2020). This aspect reveals the loopholes of South Korea's port security system.³

The crux of the loophole lies in the lack of clear jurisdiction. In particular, when the crew of a foreign ship leaves the sea, there may be disputes between the Ministry of Marine Fisheries, the Ministry of port security, and the Marine Police Department for Marine security.

1.3 The Position of the Relevant South Korean State Organs

Legal research on the controversy is scarce in Korean scholars, but Korean state authorities related to port security have explained the jurisdiction over security in maritime areas, and the authorities of their positions are different.

According to the government meeting information in 2016, through the port commune or port security commune port security line practice of Marine fisheries, for the foreign crew leave the incident, it said, Marine fisheries in port commune through CCTV monitoring guardrail, ship monitoring, however, once the foreign crew jumped into the sea, Marine fisheries can be confirmed through CCTV. That is, the ministry's position presents a dichotomous attitude to the foreign crew before and after the jump. No responsibility for the exception of CCTV, and the CCTV surveillance area refers only to the onshore facilities. This can be understood as: if the foreign crew moves to the sea, the Ministry of Marine Fisheries is no longer a clear subject of jurisdiction.

Interviews with the port commune and the port security commune of the Ministry of Marine and Fisheries, the largest port in South Korea, also revealed negative attitudes. The Busan Port Commune (a market-oriented state-owned enterprise to improve the efficiency of developing Busan Harbor facilities, maintenance and management operations) has shown that although the commune staff will personally board the ship and inspect them, it is difficult to detect the foreign crew who sneak into the sea. This can be understood as saying that only the few security human resources of the port commune are not enough to control the waters across the vast area to prevent foreign sailors from leaving the ship without authorization. And responsible for performing busan port police and security

subsidiary of busan port commune — busan port security commune said: the security commune is within the land area and bay and security accident prevention authorities, and in the face of even the ship, just jumped into the sea, although the security staff will also monitor, but the sea actually belongs to the jurisdiction of the Marine police, security commune is powerless side.

The South Korean Marine Police Agency has not taken a formal position. However, according to the interview of the Foreign affairs department of the Marine Police Department, the opinion of the Korean Coast Police said that according to the definition of Article 2 of the Port Law, "port area and facilities" include not only the land area, but also the water area. If a foreigner jumps into the sea (i. e., the floating area), he is not under the jurisdiction of the port security commune under the Port Commune Law and the Port Law. And, from the legal department and its subordinate position system of article 13, paragraph 313 and the legal department and its subordinate position system rules of article 9 paragraph 7 item 5, since the matters about "prevent illegal entry" is clearly defined for the legal entry and exit, foreign policy business, so, to prevent foreign crew from the ship of natural business under the jurisdiction of the legal department.

Similarly, the Busan Marine Police Department has said through media interviews that once the ship is moored, the sea is also under the port area under the Port Act.

2. Examination of the Current Statute

As for the opposition of the above opinions, the author will discuss the interpretation of the decree in chapter II.

2.1 Related to the Jurisdiction of the Ministry of Ocean and Fisheries of Korea

Article 8, paragraph 1, Item 1, of the Port Engineering Law of Korea stipulates that the port commune implements "port management and operation related undertakings such as port security and security". Accordingly, the jurisdiction of the security and security related matters within the port protection area belongs to the port commune (including its subsidiary security commune). There is no objection to this point.

The department in charge of port (security)

engineering is the Ministry of Ocean and Fisheries. According to article 37 of the Port Engineering Law, the minister of Marine Fisheries, in order to ensure the soundness of the project finance and the publicity of the port management, can guide and supervise the matters stipulated in the presidential order.

Here, it is very important to define the conceptual definition of "port area". As mentioned above, a port refers to "the water area and land area of the port" (Article 2 of the Port Law). And port facilities refer to water area facilities, ship equipment, wharf, other (breakwater, etc.) and other facilities. Among them, the water area facilities are the general term of the navigable channel, the berth or berth, the berth of the required place needed for ship turnover; the berth refers to the water area where the ship can be safely berth, including the quarantine anchorage of the seedling berth, the berth waiting for the berth, the berth, etc.

To sum up, the department in charge of port security is the port security commune under the Ministry of Fisheries and Fisheries. Since the port area includes the "water area" of the port, it can be said that the maritime security incidents within the port area belong under the jurisdiction of the port security commune.

In particular, the key research object selected in this paper is —. The security business of Busan Port Security Commune, a subsidiary of Busan Port Port Commune, has many unauthorized accidents. In practice, the petition police (a special police executive agency in Korea) is responsible. Therefore, the petition to the police and its relevant laws are also discuss concerning the powers of the port security commune.

Under the Police Officer Enforcement Act, the petition police accepts the supervision of the principal of the petition and the chief of the areas governing the deployment of organs, facilities or business fields. The petition police act only for the purpose of being vigilant in the area of the police and to the extent necessary to perform the duties of the Police Officer Enforcement Act. In addition, Article 3 of the Police Enforcement Act stipulates that police can cross-examine "someone who has certain reasons to suspect who has committed a crime or is committing a crime".

Therefore, it can be concluded that since the port security commune is responsible for port

security, security business, and the scope of the port includes land area and water area, so, the port security commune subordinate petition police questioning authority is not limited to the land area, petition police can also leave the foreign crew questioning.

2.2 Related to the Jurisdiction of the Korean Maritime Police Agency

The Marine Police Agency is a special service for Marine security services in South Korea. However, before dealing with exclusive business, the Korean Maritime Police Agency first needs to fulfill its obligation as a judicial police agency, that is, to support the Ministry of Justice to assist in the investigation in accordance with the Criminal Procedure Law. Specifically, the Marine police office as South Korea "criminal procedure law" on the "general judicial police organs", in principle have an obligation according to the general judicial police, support and assist in violation of the entry and exit administration law and set up a special judicial police authority — legal entry and exit, foreigners policy headquarters (entry and exit foreigners hall). It is worth noting that the Marine Police Agency is only assisting in the investigation, rather than the subject of the investigation. For example, if a foreign crew leaves the Busan Port without any reason, a special investigation team will be formed by the Exit and Entry-Exit Foreigners Office of Busan City to arrest them. At this time, the Marine police and the land police, as the general judicial police organs, will carry out emergency arrest, tracking and other support investigations.

As for the jurisdiction of the Marine Police Agency in the port, it should focus on the Marine Police Act.

Article 2, paragraph 1, of the Marine Guard Act stipulates that Marine security means that the head of the Marine Police Department exercises the police power to ensure Marine security and maritime security for the purpose of guarding maritime sovereignty. Article 2, paragraph 2, then states that "garrison waters" means the waters involved to the powers of Korea under Korean laws and international law, namely coastal, offshore and offshore waters. Among them, the Marine police is one of the key guards in the coastal waters, and the Marine police is responsible for the protection of the "important facilities near the sea". In

general terms, "coastal important facilities" refers to important industrial facilities near the ocean, airports, ports, power stations, shipbuilding stations and oil storage facilities. In Article 2 of the Implementation Order of the Marine Guard Law, the scope of important coastal facilities is stipulated as "ports and port facilities referred to in the Port Law".

Therefore, according to the Marine Police should conduct Marine preparedness activities in important facilities — ports and port facilities in coastal waters. However, the Marine Guard Law and the enforcement order of the Law only stipulate the concept and scope of "important facilities near the sea", and do not specify the specific methods and procedures for the protection of individual facilities. The question arises: to what extent can the Marine police operate in ports and port facilities?

In general, the Marine police work with the Navy as a link of national security in the ocean to perform general Marine security operations in garrison waters. In the port waters where frequent maritime security accidents occur, the Marine police use guard boats and patrol boats for maritime patrols. However, from the perspective of the effective level of law, from the perspective of the relationship between the Marine Guard Law and the Port Engineering Law which specially provides port security, the Marine Guard Law has the nature of "general law" in terms of Marine security affairs. According to the principle of preferential application of special law, when there is competition between the two, that is, the special law of port Security, regards the port as a special area and facility in the ocean, the latter should be applied in priority. In general, compared to the Marine Guard Act in the name of "ocean",

3. Legal Discussion on the Jurisdiction of Korean Ports

3.1 The Particularity of the Port Area

What is the scope of maritime security jurisdiction of various agencies for foreign ships moored in the port protection area? Since the establishment of the relevant regulations mentioned in Chapter II, the problem occurs whenever foreigners leave their posts without authorization, and it has been shelved in a dead corner. This corner is not eradicated, largely

because, in the law of the harbor protection area of maritime security jurisdiction is not clear, South Korea depends on the practice between the relevant authorities, trying to no more fundamental, more professional, from the legal aspects by strengthening the relevant authority cooperation way to solve the problem.

It is difficult to get a clear answer to the theoretical attribution of the jurisdiction of the person who escapes from the foreign ship moored at the port to the sea. Fundamentally, the port area has unique geopolitical characteristics. In Korea, this feature makes the aforementioned issues related to port security, foreign crew management, prevention of illegal entry, and maritime security, and the jurisdiction of the Ministry of Marine and Fisheries, the Ministry of Justice and the Marine Police.

Although for multiple jurisdiction of the authority between the clean theory cut is difficult, however, single from the core of the — port protection area in the —, from how in the current port security legal system under the framework of port security policy perspective, put forward countermeasures, not only for South Korea is pragmatic, is where other countries can reference.

3.2 Combine Prevention and Response

The concept of port security is more focused on "prevention" than "response", and prevention and response are meaningful as a continuous combination (effectiveness). As the precedent of the South Korean port security accident shows, the "response" debate only after the accident can not be said to have correctly grasped the core of the problem. "Prevention" and "response" should be put together and revisited from the origin.

For the jurisdiction of a foreign crew, if the prevention — response process cannot be completed smoothly before and after, it will be unable to respond quickly in an emergency, and the prevention activities will lose their meaning. That is, at the moment when the foreign crew jumps into the sea, assuming that the jurisdiction is transferred from the port commune or the port security commune over the port security affairs to the Marine police, there will be the instantaneous movement and interruption of the security jurisdiction from the land to the sea. At the national level, this

can lead to security and security gaps, which is a very fatal problem.

The author believes that, from the point of view of national security and public security, if the "prevention" and the "response" are separated, it will be difficult to achieve the expected purpose. Therefore, the direction of the countermeasures should let the same organ exercise unified jurisdiction, so that there will be continuity between prevention and response. Here you can refer to the Japanese practice. Japanese law sets the competent authority of port security business as the Marine police Agency, and carries out port security work uniformly without distinguishing between land and sea areas.

3.3 Fill the Legislative Gap

In addition to the separation of prevention and response caused by the diversification of administrative organs, the current situation of the security jurisdiction over international ships sailing in its port waters has also exposed the transformation of domestic legislation on the Security Rules for International Ships and Port Facilities (ISPS Rules).

In order to implement the ISPS rules, Korea has formulated the International Ship Port Security Law, and Article 40 of the International Ship Port Security Law limits the security activity area to "the area protected by fences, walls or walls", which actually shows the attitude of excluding maritime areas. This is contradictory to the definition of "port" given in Article 2 of the Port Act. Under such a legal system, the harbor security activities in practice are also centered on petition police, special guards, etc., and are mainly based on land facilities. However, as mentioned above, the port is a concept of both onshore and maritime areas, so it is necessary to amend the Implementation Rules so that the areas of activity of the port security authorities are also targeted at both onshore and maritime areas.

In this regard, Japan and Australia can be positive examples. From the situation of Japan, the 2004 to ensure the international navigation ship and international port facilities security and other related laws, port facilities can be divided into "dock" and "waters", and the "water" security measures separately: namely, clear, channel, anchorage, ship yard, ship clubs and other water facilities in the port security organs of security activities. Australia's

Maritime Transport and Coastal Facilities Security Act 2003 also specifically states "protected areas for coastal facilities", in particular, for ships, distinguishes between different situations in ports and near coastal facilities, and defines security measures in more detail.

In the author's opinion, during the legislation, the International Ship and Port Security Law and the rules of mutual implementation did not take into account the relationship with the Port Law, and did not think seriously about the "water facilities" part in the port protection zone. If the specific legislation is not perfect, and it is clear who is responsible for the management of water facilities, it is difficult to fundamentally solve the problem of often repeated dead corners of jurisdiction.

4. Conclusion

This study focuses on the jurisdiction of ship security in Korean ports. After the "9.11" incident, South Korea conducted domestic legislation to implement the maritime security Convention, which can be found in the practice of port ship security jurisdiction. Among them, the unclear jurisdiction is the key sticking point. When the foreign crew left the ship to enter the maritime area, the Ministry of Marine Affairs and Fisheries, the Ministry of Legal Affairs, the Marine Police Department and other departments have disputes over the jurisdiction, which has not been fundamentally resolved. As evidenced by the significant increase in foreign crew departure in 2021-2023.

Looking at the current law, it can be seen that although the Port Engineering Law of South Korea has provisions on the jurisdiction of various organs, the provisions are vague and the interpretations are different, resulting in a blank of jurisdiction during the implementation. The port security commune under the Ministry of Marine Fisheries has a negative attitude in the jurisdiction of maritime security incidents. The security activities carried out by the Marine Police Department according to the Marine Guard Law lack clear guidance, making it difficult for all departments to work together.

The geopolitical particularity of the port area makes it difficult to define the maritime security jurisdiction. This problem involves many fields, although many departments have

jurisdiction, but the boundary of power is blurred. To solve this problem, it is necessary to combine prevention and response, realize the unity of jurisdiction, and ensure the continuity of security work. In Japan, the Marine Police Agency is worth learning from. At the same time, South Korea in the ISPS rules for domestic legislation, the international ship port security law enforcement rules for the definition of the security area and the port law, conflict in water facilities management responsibility, the legislation blank, Japan and Australia port security legislation practice provides correction direction for South Korea. The results of this study are of great significance to improve the port ship security jurisdiction system in Korea, and can also provide experience for other countries to deal with similar problems. In the current era of globalization and booming maritime trade, port ship security is related to national security and maritime transport stability. All countries should continue to pay attention to and study

the changes in this field, strengthen management, meet new challenges by clarifying jurisdiction, improving legislation and other measures, and ensure the safe and smooth maritime transport.

References

- [1]. Li Chunsheng, Cheng Haitao. Conflict points and solutions between ISPS rules and SOLAS convention in practice [J]. *World Shipping*, 2017, 40 (06): 6-8.
- [2]. Chenghai, Jinbo. Analysis of the performance status and countermeasures of Chinese ship security [J]. *China Maritime Affairs*, 2008, (12): 59-62.
- [3]. <https://www.mof.go.kr/doc/ko/selectDoc.do?docSeq=56291&bbsSeq=9&menuSeq=375#none>
- [4]. Interview with the Director of the Investigation and Intelligence Service of the Marine Police Agency (13 November 2020) and the police officer (10 December 2021)